

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Plaintiff, v. ELB ELECTRONICS, INC., Defendant.	C.A. No. 15-cv-056-RGA
BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Plaintiff, v. ETI SOLID STATE LIGHTING, INC., Defendant.	C.A. No. 15-cv-057-RGA
BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES, Plaintiff, v. FEIT ELECTRIC COMPANY, INC., Defendant.	C.A. No. 15-cv-058-RGA

**STIPULATION AND ~~PROPOSED~~ ORDER OF
NON-INFRINGEMENT AND CONSOLIDATION**

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Plaintiff”) and Defendants ELB Electronics, Inc., Feit Electric Company, Inc., and ETi Solid State Lighting Inc. (collectively, “Defendants”), to conserve judicial and party resources by limiting further litigation in this Court and to permit any party to seek appellate review of this Court’s claim

construction order as to U.S. Patent. No. 7,086,747 (the “’747 patent”), hereby stipulate and agree, subject to the Court’s approval, that:

1. Plaintiff accused Defendants of infringing claims 12 and 29 of the ’747 patent, directly or indirectly, by, among other acts, making, using, offering to sell, selling, or importing into the United States the products set forth in Exhibit A (the “Accused Products”). The Accused Products are LED lighting products that replace conventional fluorescent bulbs in lighting fixtures.

2. Defendants denied Plaintiff’s allegations and asserted, among other defenses, the defense of non-infringement.

3. On November 4, 2016, Plaintiff withdrew its allegations of infringement of claim 29 of the ’747 patent leaving claim 12 as the only asserted claim.

4. On December 28, 2016, the Court issued a Memorandum Opinion and, on January 4, 2017, an Order (the “Order”) construing, among other terms, the term “attachment surface” in claim 12 of the ’747 patent. The Court construed the term to mean “layer of the housing that is secured to the ballast cover.”

5. Plaintiff stipulates that it cannot meet its burden of proving that the Accused Products infringe the ’747 patent under the Court’s construction of “attachment surface” because the Accused Products do not contain an “attachment surface” that is “secured to the ballast cover” of an existing light fixture.

6. The parties reserve all other rights and arguments. The parties also reserve their rights upon any remand to supplement their respective infringement and invalidity contentions in light of the Court’s claim construction Order and/or the U.S. Court of Appeals for the Federal Circuit’s decision.

7. In the event the U.S. Court of Appeals for the Federal Circuit dismisses Plaintiff's appeal as premature, Plaintiff reserves the right to undertake further proceedings in this Court on remand to complete the record for appeal.

8. To facilitate a single appeal, the parties respectfully request that *Blackbird Tech LLC d/b/a Blackbird Technologies v. ETI Solid State Lighting, Inc.*, C.A. No. 15-cv-057-RGA and *Blackbird Tech LLC d/b/a Blackbird Technologies v. Feit Electric Company, Inc.*, C.A. No. 15-cv-058-RGA be consolidated under *Blackbird Tech LLC d/b/a Blackbird Technologies v. ELB Electronics, Inc.*, C.A. No. 15-cv-056-RGA for all pretrial purposes, without prejudice to any party's right to request that the cases be severed upon remand, and that the Proposed Final Judgment attached hereto as Exhibit B be entered in that case.

9. The time to file any motion for attorneys' fees is extended until thirty days after the Federal Circuit issues its final mandate following exhaustion of all appeals.

Dated: February 22, 2017

Respectfully submitted,

OF COUNSEL:

Wendy Verlander
wverlander@blackbird-tech.com
Christopher Freeman
cfreeman@blackbird-tech.com
Sean K. Thompson
sthompson@blackbird-tech.com
Blackbird Tech LLC d/b/a
Blackbird Technologies
One Boston Place, Suite 2600
Boston, MA 02108
617.307.7100

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis
Stamatios Stamoulis #4606
stamoulis@swdelaw.com
Richard C. Weinblatt #5080
weinblatt@swdelaw.com
Two Fox Point Centre
6 Denny Road, Suite 307
Wilmington, DE 19809
Telephone: (302) 999-1540

Attorneys for Plaintiff
Blackbird Tech LLC d/b/a
Blackbird Technologies

MORRIS, NICHOLS, ARSHT & TUNNELL
LLP

OF COUNSEL:

John M. Hintz
MAYNARD, COOPER & GALE, P.C.
The Fred F. French Building
551 Fifth Avenue – Suite 2000
New York, NY 10176
(646) 609-9284
jhintz@maynardcooper.com

By: /s/ Michael J. Flynn
Karen Jacobs (#2881)
Michael J. Flynn (#5333)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 351-9661
kjacobs@mnat.com
mflynn@mnat.com

*Attorneys for Defendants ELB Electronics, Inc.,
and Feit Electric Company, Inc.*

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

D. Peter Hochberg
Walter | Haverfield LLP
The Tower at Erievue
1301 East 9th Street, Suite 3500
Cleveland, OH 44114-1821
(216) 928-2903
(216) 916-2445
dphochberg@walterhav.com

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Alan R. Silverstein (#5066)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com
asilverstein@potteranderson.com

*Attorneys for Defendant ETi Solid State
Lighting Inc.*

IT IS SO ORDERED on this 23 day of February, 2017



THE HONORABLE RICHARD G. ANDREWS

EXHIBIT

A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

ELB ELECTRONICS, INC., *et al.*,

Defendants.

C.A. No. 15-cv-056-RGA
(CONSOLIDATED)

**PLAINTIFF'S FEBRUARY 22, 2017 AMENDED IDENTIFICATION OF
ACCUSED PRODUCTS**

Blackbird Tech LLC d/b/a Blackbird Technologies ("Blackbird Technologies") hereby amends its previous identification of the products it alleges infringe U.S. Patent No. 7,086,747.

Blackbird Technologies reserves its right to further supplement the disclosures made herein.

Defendant ELB Electronics

LED lighting products with the following model numbers:

LEDBX-25-850-R36-RSx
LEDBX-25-840-R36-RSx
LEDBX-25-835-R36-RSx
LEDBX-25-830-R36-RSx
LEDBX-17-850-B-RSx
LEDBX-17-840-B-RSx
LEDBX-17-835-B-RSx
LEDBX-17-830-B-RSx
LEDBX-22-850-B-RSx
LEDBX-22-840-B-RSx
LEDBX-22-835-B-RSx
LEDBX-22-830-B-RSx
LEDBX-30-850-R50-RSx
LEDBX-30-840-R50-RSx
LEDBX-30-835-R50-RSx
LEDBX-30-830-R50-RSx
LEDBX-32-850-R55-RSx

LEDBX-32-840-R55-RSx
LEDBX-32-835-R55-RSx
LEDBX-32-830-R55-RSx
LEDT8-17-850-B-Fxx Ux
LEDT8-17-840-B-Fxx Ux
LEDT8-17-835-B-Fxx Ux
LEDT8-17-830-B-Fxx Ux
LEDT8E-17-850-Fxx Ux
LEDT8E-17-840-Fxx Ux
LEDT8E-17-835-Fxx Ux
LEDT8E-17-830-Fxx Ux
LEDT8E-22-850-Fxx
LEDT8E-22-840-Fxx
LEDT8E-22-835-Fxx
LEDT8E-22-830-Fxx
LEDT8E-60-27-8xx-xxx
LEDT8-8-850-B-xSx
LEDT8-8-840-B-xSx
LEDT8-8-835-B-xSx
LEDT8-8-830-B-xSx
LEDT8-8-850-B-FHF
LEDT8-8-840-B-FHF
LEDT8-8-835-B-FHF
LEDT8-8-830-B-FHF
LEDT8-12-850-B-xSx
LEDT8-12-840-B-xSx
LEDT8-12-835-B-xSx
LEDT8-12-830-B-xSx
LEDT8-17-850-B-xSx
LEDT8-17-840-B-xSx
LEDT8-17-835-B-xSx
LEDT8-17-830-B-xSx
LEDT8-17-850-B-FHF
LEDT8-17-840-B-FHF
LEDT8-17-835-B-FHF
LEDT8-17-830-B-FHF
LEDT8-22-850-B-xSx
LEDT8-22-840-B-xSx
LEDT8-22-835-B-xSx
LEDT8-22-830-B-xSx
T8-36-8xx-xxx
T8-44-8
LEDT8-17-850-U-FSF
LEDT8-17-840-U-FSF
LEDT8-17-835-U-FSF
LEDT8-17-830-U-FSF

LEDT8-22-850-U-FSF
LEDT8-22-840-U-FSF
LEDT8-22-835-U-FSF
LEDT8-22-830-U-FSF
LEDT8-44-850-U-FSF
LEDT8-44-840-U-FSF
LEDT8-44-835-U-FSF
LEDT8-44-830-U-FSF
LEDT8H-96-50-850-RSx
LEDT8H-96-50-840-RSx
LEDT8H-96-50-835-RSx
LEDT8H-96-50-830-RSx
LEDT8H-5-29-850-FSx
LEDT8H-5-29-840-FSx
LEDT8H-5-29-835-FSx
LEDT8H-5-29-830-FSx
LEDT8S-8-36-850-B-FSx
LEDT8S-8-36-840-B-FSx
LEDT8S-8-36-835-B-FSx
LEDT8S-8-36-830-B-FSx
LEDT8S-8-44-850-B-FSx
LEDT8S-8-44-840-B-FSx
LEDT8S-8-44-835-B-FSx
LEDT8S-8-44-830-B-FSx
LEDT5-10-850-B-FSx
LEDT5-10-840-B-FSx
LEDT5-10-835-B-FSx
LEDT5-10-830-B-FSx
LEDT5-15-850-B-FSx
LEDT5-15-840-B-FSx
LEDT5-15-835-B-FSx
LEDT5-15-830-B-FSx
LEDT5-20-850-B-FSx
LEDT5-20-840-B-FSx
LEDT5-20-835-B-FSx
LEDT5-20-830-B-FSx

Defendant ETi Solid State Lighting

LED lighting products with the following model numbers:

54031231
54031232
54031241
54031242
54104411

54104431
54104441
54105111
54105131
54105141
54108111
54108131
54108141
54108161
54130111
54130131
54130141
54140241
54140261
54145041
54145061
54145062
54256141
54292141
54293141
54296141
54296161
54299141
54299161

Defendant Feit Electric Company, Inc.

LED lighting products with the following item numbers:

T96/841/LED
T848/841/LED/MP/10
T848/841/LED/2
T4819/LEDIF/41K
T48/850/LED
T48/841/LED
T48/830/LED
T24/850/LED
T24/841/LED
T48/SP830/LED
T48/4K/LED/2
PL26E/H/841/LED
PL26E/V/841/LED

Respectfully submitted,

Dated: February 22, 2017

OF COUNSEL

Christopher Freeman
cfreeman@blackbird-tech.com
Wendy Verlander
wverlander@blackbird-tech.com
Sean K. Thompson
sthompson@blackbird-tech.com
Blackbird Tech LLC d/b/a
Blackbird Technologies
One Boston Place, Suite 2600
Boston, MA 02108
617.307.7100

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis
Stamatios Stamoulis #4606
stamoulis@swdelaw.com
Richard C. Weinblatt #5080
weinblatt@swdelaw.com
Two Fox Point Centre
6 Denny Road, Suite 307
Wilmington, DE 19809
Telephone: (302) 999-1540

Attorneys for Plaintiff
BLACKBIRD TECH LLC d/b/a BLACKBIRD
TECHNOLOGIES